

K.Solomon, Vs. the Deputy Inspector General of Prison,

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Court : Chennai

Decided On : Aug-10-2010

Judge : K.Venkataraman, J.

Acts : Constitution Of India - Article 226

Appeal No. : Writ Petition No.19241 of 2008

Appellant : K.Solomon,

Respondent : The Deputy Inspector General of Prison,

Advocate for Def. : Mr.R.Neelakandan, Adv.

Advocate for Pet/Ap. : Mr.R.Krishnamurthy, Adv.

Judgement :

1. Challenging the order of the respondent dated 04.08.2008 dismissing the petitioner from service without conducting any enquiry, the present writ petition has been filed.

2. The facts that led the petitioner to file the writ petition, as put forth by him in his affidavit in support of the writ petition are stated here under:

(a) The petitioner was appointed as a II Grade Warder on 25.03.1998. While he was working at Central Prison II, Puzhal, Chennai, the first respondent by his order dated 02.08.2008 placed him under suspension on initiation of Criminal

proceedings against him in Crime No.11/2008. It was stated in the order of suspension that he demanded a bribe of Rs.8000/- from Sivashanmugam for arranging separate cell and for providing facilities to his friends. It was stated further that the said Sivashanmugam preferred a complaint before the Deputy Superintendent of Police (Vigilance and anti-corruption) on 01.08.2008 based on which a trap was organised and he was arrested and released on bail on the same day. (b) The order of suspension was passed in the public interest under section 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The procedure contemplated under the said Rule has to be followed by issuing charge memo, providing opportunity for giving written statement of defence, Oral enquiry and thereafter the enquiry report should be furnished giving opportunity to make further submissions. Later, the competent authority may impose all the penalties specified under Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. (c) The procedure for imposing major penalty is mandatory and it cannot be waived except under Section 311 (2) (C) of the Constitution. It envisages that no person should be dismissed or removed or reduced in rank except after an enquiry. The said Rule shall not apply, where the President or the Governor as the case may be is satisfied that in the interest of the security of a State, it is not expedient to hold such enquiry. While so, the respondent by order dated 04.08.2008 dismissed him from service exercising the power vested in Clause (C) of the second proviso to Clause (2) of Article 311 of the Constitution. Thus, challenging the said order the present writ petition has been filed.

3. Counter affidavit was filed on behalf of the respondent wherein the following facts have been set out:

(a) The petitioner, when he was a trainee abused the Jailor and hence charges under Rule 17(b) was framed and he was dismissed from service on 05.08.2004 by the Superintendent of Prisons, Central Prison, Vellore. His appeal and revision were rejected. However, the Government considering that the punishment imposed on him was excessive; by an order dated 18.12.2006 modified the punishment of "dismissal from service" into that of "Stoppage of increment for a period of five year with cumulative effect".

(b) While, he was working in Central Prison II, Puzhal, a letter was received from the Inspector of Police , Vigilance and Anti-Corruption, Chennai by the respondent, which revealed that on 01.08.2008, at 16.30 hrs Thiru.Sivashanmuganathan preferred a complaint before the Deputy Superintendent of Police, Vigilance and Anti Corruption, stating that the petitioner had demanded Rs.8000/- as bribe for arranging separate cell and providing facilities for his friends who are in prison. A case has been registered against the petitioner. A trap was organised and the petitioner was caught red handed. He was arrested and later released on bail. He was kept under suspension under Rule 17(e) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

(c) Bomb blasts took place at Bangalore, Ahmedabad and Surat and therefore precautionary measures have to be taken in the State of Tamil Nadu also. A special drive was conducted in the cell where fundamentalist prisoner Raja Hussain confined in Central Prison II, Puzhal on 24.07.2008 and during the search, one mobile phone along with battery and sim card was seized from him after enormous struggle.

(d) It was also reported that convict prisoner Ali Abdullah confined in Central Prison-II was in possession of two mobile phones. It has become a practice of certain faction of prisoners to use mobile phones inside the prisons to activate their operations outside the prisons such as terrorist activities, bomb blasts etc., Thus mobile phone has become a great threat to the security of the State.

(e) The press reports repeatedly charged that the petitioner illegally helped prisoners for pecuniary gain. It was considered as extremely grave in nature. In view of the reasons stated above, complex questions involving the security of the State was involved. Therefore, if departmental action is taken against the petitioner, the complex questions involved in the investigation of the fundamentalists and terrorists need to be divulged to the petitioner and others, which will eventually endanger the security of the state. Therefore, in the larger interest of the security of the State no inquiry could be conducted in this case. The petitioner was therefore dismissed from service by invoking clause (C) of the second proviso to clause (2) of Article 311 of the Constitution of India. The said

clause does not require that reasons for the satisfaction should be recorded in writing.

(f) Certain officials were transferred for the reasons that they were negligent or for their lethargic attitude in discharging their duties. However, in the case of the petitioner, the petitioner had indulged in the activities affecting the security of the State and hence extreme steps was taken against him. Therefore, there was no discrimination.

(g) Proper reasons were stated in the order of dismissal. The reason "Security of the State" gets paramount importance . The reasons need not be disclosed as per the judgment of the Hon'ble Apex Court. The petitioner ought to have filed an appeal before the appellate authority against the order of dismissal. Making those statements, the counter affidavit seek for the dismissal of the writ petition.

4. I have heard Mr.R.Krishnamurthy, the learned Senior Counsel appearing for the petitioner assisted by Mr.R.Karthikeyan and Mr.R.Neelakandan, the learned Government Advocate appearing for the respondent.

5. The first and foremost submission that was made on behalf of the petitioner by the learned Senior Counsel appearing for the petitioner is that

(a) When the disciplinary authority had already initiated action against the petitioner under the Tamil Nadu Civil Services (Discipline and Appeal) Rules framed under the Article 309 of the Constitution, the procedure contemplated under the said Rule ought to have been observed. Having invoked Rule 17(e), it is not open to the respondent to short circuit the guarantee enshrined under Article 311 of the Constitution.

(b) The power conferred under Clause (C) of the second proviso to Clause (2) of Article 311 of the Constitution cannot be exercised for collateral purpose. The respondent failed to give reasons as to why it had to be dispensed with.

(c) The offence under Section 7 of the Prevention of Corruption Act cannot be considered as affecting the security of the State.

(d) The respondent has no jurisdiction to exercise the powers vested under Clause (C) of the second proviso to Clause (2) of Article 311 of the Constitution of India.

6. On the other hand, it has been contended on behalf of the respondent, by the learned Government Advocate that

(a) The second proviso to Article 311(2) provides for certain exceptions and the case of the petitioner fits in that exception.

(b) In the interest of the security of the State, it was not expedient to hold an enquiry and hence the petitioner was dismissed from service without holding an enquiry.

(c) The above proviso does not require that reasons for satisfaction should be recorded in writing.

7. The facts which are not disputed are:

(a) The petitioner was appointed as a II Grade Warder on 25.03.1998 and while he was working at Central Prison II, Puzhal, Chennai, he was suspended from service exercising power under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (herein after called the Rules). The allegation against him was that he demanded a bribe of Rs.8,000/- from one Sivashanmuganathan for arranging separate cell and providing facilities to his friends. A trap was laid and he was arrested and let out on bail on the same day. The suspension was made on 02.08.2008 and on 04.08.2008, he was dismissed from service in exercise of powers vested in Clause (C) of the second proviso to Clause (2) of Article 311 of the Constitution.

8. Before advertng to the rival contention, it would be useful to extract the order of suspension dated 02.08.2008, passed by the respondent against the petitioner.

"Whereas a compliant against Thiru K.Solomon, Second Grade Warder, No.31, Central Prison II, Puzhal, of a criminal offence as detailed below (Brief Details of Criminal Offence) is under investigation. "Thiru.K.Solomon, Grade II Warder, Central Prison II, Puzhal demanded bribe of Rs.8000/- from

Thiru.Sivashanmuganathan @ Shankar No.9, 3rd Street, NGO Colony, Vadapalani, Chennai-26 for arranging separate cell and provide facilities for his friends. Thiru.Sivashanmuganathan preferred a complaint on 01.08.2008 at 16.30 hrs before the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Chennai City-I, Detachment, Chennai-28. Based on this complaint, Vigilance and Anti-Corruption, Chennai City-I, Detachment registered case in Crime No.11/2008 u/s Prevention of Corruption Act 1988 on 01.08.2008 against Thiru.K.Solomon, Grade II Warder, Central Prison II, Puzhal. A trap was organised and in the trap Thiru.K.Solomon, Grade II Warder, Central Prison II, Puzhal, caught red handed and he was arrested on 01.08.2008 at 22.00 hrs and later released on bail on his health grounds at 24.00 hrs."

2. And whereas in the circumstance of the case, it is necessary in the Public interest to place the said Thiru.K.Solomon, Grader II Warder, Central Prison II, Puzhal under suspension from service with immediate effect.

3. Now, therefore, under sub-rule (e) of rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the said Thiru.K.Solomon, Grade II Warder, Central Prison II, Puzhal with immediate effect placed under suspension from service, until further orders.

4. During the period of suspension, the said Thiru.K.Solomon, Grade II Warder, Central Prison II, Puzhal will be paid subsistence allowance as admissible under rule 53(1) of Fundamental Rules.

5. The headquarters of the said Thiru.K.Solomon, Grade II Warder, Central Prison II, Puzhal, during the period of suspension shall be Chennai he shall not leave the headquarters without obtaining prior permission of the authority concerned."

9. It would also be useful to extract the order of dismissal of the respondent, dated 04.08.2008.

"Thiru K.Solomon, Grade II Warder No.31 (under suspension), Central Prison-II, Puzhal, Chennai.66 had committed the following offences.

2] On 1.8.2008 at 16.30 Hours, Thiru.Sivashanmuganathan @ Shankar, age 43/08, S/o.Thiru.Rathinasabapathy, No.9, 3rd Street, NGO Colony, Vadapalani, Chennai-26, preferred a complaint before the Deputy Superintendent of Police, vigilance and Anti-Corruption, Chennai City-I Detachment, Chennai-28 stating that Thiru.K.Solomon, Grade II Warder, Central prison-II, Puzhal, Chennai.66 had demanded Rs.8000/- (Rupees eight thousand only) as bribe for arranging separate cell and to provide facilities for the complainant's friends who are confined in Puzhal Central Prison. In this connection, a case in Vigilance and Anti-Corruption, Chennai City- I Cr.No.11/08, u/s.7 of Prevention of Corruption Act, 1988 was registered on 1.8.2008 against Thiru.K.Solomon, Grade II Warder, Central Prison-II, Puzhal, Chennai.66. 3] A trap was organized by Thiru.S.Amalraj, Inspector of Police and team in the presence of two official witnesses on 1.8.2008 (1) Thiru.R.Krishnasamy, Superintendent, Office of the Commercial Tax Officer, Alwarpet Assessment Circle, Chennai (2) Thiru.G.Padmanabhan, Assistant, Office of the Commercial Tax Officer, Alwarpet Assessment Circle, Chennai. Accused Officer caught red handed after demand and acceptance of Rs.8000/- (Rupees eight thousand only) as illegal gratification near Indian Oil Petro Bunk situated as the backside of the Koyambedu Police Station. The bribe amount of Rs.8000/- (Rupees eight thousand only) was recovered fully intact from the accused and phenolphthalein test conducted proved positive. 4] Thiru K.Solomon, Grade II Warder No.31 was arrested on 1.8.2008 at 22.00 Hours and released on bail on his health grounds at 24.00 Hours. He was also placed under suspension with immediate effect, by this office proceedings No.4597/G1/2008, dated 2.8.2008. 5] Nowadays, it has become a practice of certain faction of prisoners such as murderers, gang leaders, fundamentalists etc., to use mobile phones inside the prisons to activate their operations outside the prisons such as, terrorist activities, bomb blasts, robbery, murders, executed by their associates, accomplices, gang members and followers. Such prisoners are utilizing the unlawful services rendered by certain prison personnel, by way of smuggling mobile phones, sim cards, mobile batteries etc., for bribe. Prison Department is initiating stringent action to curtail this menace by all means. In the above circumstances, the demand and acceptance of illegal gratification of Rs.8000/- by Thiru.K.Solomon, Grade II Warder No.31 (under suspension) for providing certain facilities to a

prisoner confined in Central Prison-II, Puzhal is considered to be so grave in the interest of Prison administration, discipline to be maintained by the uniformed force and also in the interest of the security of the State. It is also considered that such an illegal activity of prison personnel should be put to an end at the earliest. 6] Hence, the Superintendent of Prisons (i/c), Central Prison-II, Puzhal is satisfied that, in the interest of the security of the State, it is not expedient to hold an enquiry against Thiru K.Solomon, Grade II Warder No.31 (under suspension), Central Prison-II, Puzhal under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. 7] Therefore, in exercise of the powers vested in Clause (c) of the second proviso to Clause (2) of Article 311 of the Constitution of India, the Superintendent of Prisons (i/c), Central Prison-II, Puzhal hereby dismissed Thiru K.Solomon, Grade II Warder No.31 (under suspension), Central Prison-II, Puzhal, from service, with immediate effect."

10. Now, the question that arises for consideration is when the petitioner was placed under suspension by an order dated 2.8.2008 under Rule 17(e) of the said Rules, without following the due procedure as contemplated viz., the issuance of charge memo, seeking an explanation, an enquiry, furnishing of the enquiry report, further explanation and thereafter the order thereon, why the order dated 04.08.2008 was passed dismissing the petitioner from service by-passing all the procedures set out above. The only reason which has been cited for dispensing with the normal procedures is that the Superintendent of Police, Central Prison II, Puzhal is satisfied that, in the interest of the security of the State, it is not expedient to hold an enquiry against the petitioner under Rule 17(b) of the said Rules. Therefore exercising the powers vested in Clause (C) of the second proviso to Clause (2) of Article 311 of the Constitution of India, the order of dismissal was passed against the petitioner, by the disciplinary authority namely, the Superintendent of Police, Central Prison II, Puzhal.

11. Now, the further question that arises is whether the case of the petitioner is fit into the above referred proviso, whether it was proper to dispense with the normal procedure contemplated under Rule 17 of the said Rules and whether the disciplinary authority could invoke Clause (C) of the second proviso to Clause (2) of Article 311 of the Constitution of India, before passing order of dismissal of the

petitioner.

12. Before adverting to the said contention, it would be useful to extract Article 311 of the Constitution of India.

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.- (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity or being heard in respect of those charges. Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

13. The above referred proviso, especially Clause (C) of the second proviso to Clause (2) of Article 311 of the Constitution of India, envisages that where the

President or the Governor, as the case may be, is satisfied in the interest of the security of the State, it is not expedient to hold a regular enquiry, an order of dismissal could be passed without holding an enquiry. In the case on hand, it is not the case of the respondent that the President or the Governor, as the case may be were satisfied that in the interest of the security of the State, it was not possible to hold an enquiry before the order of dismissal. The order itself was passed by the Deputy Inspector General of Prisons and the Superintendent of Prisons (i/c). It is not his case that the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold an enquiry before an order of dismissal. It would be useful to extract the relevant portion in the impugned order which will throw light why the normal enquiry, before the order of dismissal was dispensed with. "5] Nowadays, it has become a practice of certain faction of prisoners such as murderers, gang leaders, fundamentalists etc., to use mobile phones inside the prisons to activate their operations outside the prisons such as, terrorist activities, bomb blasts, robbery, murders, executed by their associates, accomplices, gang members and followers. Such prisoners are utilizing the unlawful services rendered by certain prison personnel, by way of smuggling mobile phones, sim cards, mobile batteries etc., for bribe. Prison Department is initiating stringent action to curtail this menace by all means. In the above circumstances, the demand and acceptance of illegal gratification of Rs.8000/- by Thiru.K.Solomon, Grade II Warder No.31 (under suspension) for providing certain facilities to a prisoner confined in Central Prison-II, Puzhal is considered to be so grave in the interest of Prison administration, discipline to be maintained by the uniformed force and also in the interest of the security of the State. It is also considered that such an illegal activity of prison personnel should be put to an end at the earliest. 6] Hence, the Superintendent of Prisons (i/c), Central Prison-II, Puzhal is satisfied that, in the interest of the security of the State, it is not expedient to hold an enquiry against Thiru K.Solomon, Grade II Warder No.31 (under suspension), Central Prison-II, Puzhal under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules."

14. The order extracted above do not indicate that the order of dismissal came to be passed on the basis of the subjective satisfaction of the President of India or Governor of Tamil Nadu. While so, the respondent cannot invoke the said

provision and pass an order of dismissal of the petitioner.

15. Admittedly, the respondent has not invoked the said provision to dispense with the enquiry against the petitioner. In fact, in the end of the impugned order, it is stated "Therefore, in exercise of the powers vested in Clause (c) of the second proviso to Clause (2) of Article 311 of the Constitution of India, the Superintendent of Prisons (i/c), Central Prison-II, Puzhal hereby dismisses Thiru.K.Solomon, Grade-II Warder No.31 (under suspension), Central Prison-II, Puzhal, from service, with immediate effect."

16. Rule 84 of the Tamil Nadu Government Business Rules and Secretariat Instructions stipulates that Orders and Proceedings of Government shall be authenticated in the manner prescribed in rules 11 and 12 of the Tamil Nadu Government Business Rules. It also stipulates, who has to authenticate the same. The said Rule is extracted here under: "84. Orders and Proceedings of Government shall be authenticated in the manner prescribed in rules 11 and 12 of the Tamil Nadu Government Business rules. Copies of such orders and proceedings may be authenticated by the Section Officer in the department concerned as follows:- (By order of the Governor)

A.B.C

Secretary to Government

(True Copy/Extract)

Forwarded to X. Y. Z.

(By order)

D.E.F

Section Officer. The signature A.B.C shall be printed or typewritten or copied, the signature D.E.F being the actual signature of the authenticating officer."

17. It is not the case of the respondent that the proposal of the Superintendent of Prisons to dispense with the normal enquiry has been sent to the Government and

the Secretary to the Government has acceded to his request. It has to be noted that the petitioner was suspended on 02.08.2008 and was dismissed on 04.08.2008. Hardly one day is left between the order of suspension and the order of dismissal. Within one day, papers would not have been moved to the Government and the orders would have been obtained from the competent authority. That apart, even it is not the case of the respondent that the impugned order came to be passed with the concurrence of the authority concerned.

18. That apart, it is not the case of the respondent that such normal enquiry was dispensed with, on the ground that it is not practicable to hold such enquiry. In such circumstances, no doubt Clause (b) of the second proviso to Clause (2) of Article 311 of the Constitution of India, provides for such dispensing with an enquiry. It would be useful to extract the said clause. "(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry."

19. No doubt, that the security of the State is of paramount importance. No procedure, whatsoever can wait, if the security of the State is at stake. The authority who is empowered to Act has to do it in a manner known to law.

20. In view of the above stated position, the impugned order of dismissal passed by the respondent dated 04.08.2008 is liable to be set aside and accordingly set aside and the writ petition stands allowed. However, no orders as to costs.

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